



April 17, 2000

Mr. John Steiner
Division Chief
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2000-1501

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134472.

The City of Austin (the "city") received a request for "information regarding pavement designs and test results provided to the City by three companies." The three companies are: Capitol Aggregates ("Capitol"), Austin Asphalt ("Austin"), and Industrial Asphalt ("Industrial"). You indicate that you have already released the information from Industrial. You have submitted a representative sample of the information from Capitol and Austin, and ask whether the information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.¹ We have considered the exceptions noted and have reviewed the submitted information.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The city provided this office with a statement indicating that the request for public information was received by the city on January 24, 2000. You did not seek a decision from this office until February 22, 2000, more than ten business days after the date the city received the request for information. Consequently, the requested information is therefore presumed to be public. In the absence of a demonstration that the requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). The applicability of sections 552.101 and 552.110 of the Government Code provides a compelling reason sufficient to overcome the presumption that the submitted information is public.

Pursuant to section 552.305 of the Government Code, you notified Capitol and Austin that the city had received a public information request for their pavement designs and test results. Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Having reviewed the notice that was sent to the third parties, we note that the notification sent to Capitol and Austin is not in compliance with section 552.305 of the Government Code. Pursuant to section 552.305, the notice to the third party must:

- (1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and

- (2) include:

- (A) a copy of the written request for information, if any, received by the governmental body; and

- (B) a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:

- (i) each reason the person has as to why the information should be withheld; and

(ii) a letter, memorandum, or brief in support of that reason.

You may obtain a copy of the notice form by accessing the Attorney General's web site at www.oag.state.tx.us, or by calling the Open Records Division at (877) OPEN-TEX (673-6839).

The city provided this office with a statement from Capitol asserting that the requested information should not be released. The city also provided a document which evidences Austin's assertion that the requested information is proprietary. After careful review, we do not believe these statements are sufficient to show that the information is excepted from disclosure pursuant to section 552.110 of the Government Code. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Therefore, the information may not be withheld from public disclosure under section 552.110.

You assert that the submitted information is excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Neither the city nor the third parties has specifically identified a constitutional provision, statute, or judicial decision which makes the information confidential by law. Accordingly, you may not withhold the submitted information under section 552.101. Consequently, the city must release the information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 134472

Encl. Submitted documents

cc: Mr. Doug Ferrell
Centex Materials, Inc.
P.O. Box 2252
Austin, Texas 78768
(w/o enclosures)